

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0147
Sales and Use Tax
Calendar Years 1994, 1995, 1996

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ISSUE

I. **Gross Retail Tax** – Taxability of Environmental Quality Control Equipment

Authority: IC 6-2.5-5-30; 45 IAC 2.2-5-70

Taxpayer protests the assessment of use tax upon purchases of equipment used to control environmental quality.

STATEMENT OF FACTS

The taxpayer is an industrial service contractor doing business in Indiana. The taxpayer performs maintenance work and cleaning services for their customers, the majority of whom operate steel mills or refineries. In addition, the taxpayer also removes flammable and hazardous waste for their customers. In the audit, use tax was assessed upon the purchases of vacuum and waterblaster units that were utilized by the taxpayer in the prevention of polluted air. On two separate occasions a request was made to the taxpayer to provide any information that they felt further supported their contention. No response was forthcoming to either of these requests. As a result, a formal hearing was not held. Rather, the decision on this matter was based solely on information contained within the taxpayer's protest letter and the auditor's audit report.

I. **Gross Retail Tax** – Taxability of Environmental Quality Control Equipment

DISCUSSION

At issue is whether or not the purchase of vacuum and waterblaster units qualifies for the environmental quality control exemption.

As stated in Indiana Code 6-2.5-5-30, "Sales of tangible personal property are exempt from the state

gross retail tax if:

- (1) the property constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and
- (2) the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture”.

As can be seen above, two requirements must be met before the items in question can be considered to be exempt, quality control-related equipment. It would appear that both the vacuum and waterblaster units meet the first requirement. That is, they are both used for the purpose of complying with environmental quality requirements. However, the items in question do not meet the second requirement of said code citation. The second requirement of Indiana Code 6-2.5-5-30 holds that “the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining or agriculture”. As previously noted, the taxpayer is an industrial service contractor. Consequently, the taxpayer does not fall within the scope of business types listed in the code cite that are afforded this exemption.

FINDING

The taxpayer’s protest is respectfully denied.